

excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. Fed. R. Evid. 403.

A. Plaintiff Should be Barred from Testifying Regarding the Tax Ramifications of Cashing Out Her Savings Plan.

Defendants expect that Plaintiff will testify that when her position was eliminated she cashed in her Matched Savings Plan at a time when the stock market was at its lowest and paid thousands of dollars in taxes on the proceeds. See Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment at p. 27. Such testimony is highly speculative and is unfairly prejudicial. Fed. R. Evid. 403. Even if Plaintiff had not been terminated, she would have been required to cash-out her savings plan at some point in the future and the relative worth of the plan and the tax consequences at that time are impossible to predict. 26 U.S.C. § 402(a) (providing that amounts distributed from, among other things, 401(k) plans, are taxable to the distributee in the taxable year in which distributed). In fact, the savings plan could be worth more at this time than at some undefined point in the future. Therefore, any speculative testimony regarding the tax consequences of Plaintiff cashing-out her savings plan should be barred as having no probative value and being unfairly prejudicial.

B. All References to Lee Hildebrandt as "Judge" or "Your Honor" Should be Barred.

The fact that Plaintiff's husband is a judge has no relevance in this case. Defendants expect that Plaintiff's counsel will refer to Plaintiff's husband as "Judge" Hildebrandt, "your honor," or by other similar terminology. Any reference to Lee Hildebrandt as "Judge" or similar terminology is unfairly prejudicial to Defendants and creates the impression that his testimony should be given greater weight or is more credible than that of other "lay" witnesses. If called at trial, Mr. Hildebrandt would be presumably testifying regarding his wife's attempts to locate

subsequent employment after the elimination of her position and the effect her termination had on her. He would not be testifying in his capacity as a judicial officer and any impression that he is doing so or that his testimony is beyond reproach is misleading and unfairly prejudicial. Fed. R. Evid. 403. Accordingly, Defendants request that all parties be barred from referring to Mr. Hildebrandt by his judicial title.

WHEREFORE, Defendants respectfully request that this Motion in Limine be granted in its entirety, and that the parties be: 1) barred from referring to Plaintiff's husband as "Judge" Hildebrandt, "your honor," or by other similar terminology; and 2) barred from mentioning or alluding to the fact that Plaintiff paid mandated taxes when she cashed out her Hyatt matching savings plan.

Dated: July 30, 2004

Respectfully submitted,
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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Stanley M. Chesley, Esq. and Robert Steinberg, Esq., Waite, Schneider, Bayless, & Chesley Co., L.P.A., 1513 Central Trust Tower, Cincinnati, Ohio, 45202, Michael J. O'Hara, Esq., O'Hara, Ruberg, Taylor, Sloan & Sergeant, 209 Thomas More Park, Suite C, P.O. Box 17411, Covington, Kentucky 41017-0411.

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